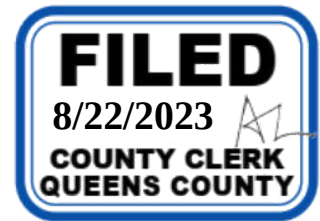


Star Auto Sales of Queens LLC v Filardo
2023 NY Slip Op 35232(U)
August 17, 2023
Supreme Court, Queens County
Docket Number: Index No. 702350/2018
Judge: Denis J. Butler
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY



Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

-----x

STAR AUTO SALES OF QUEENS LLC dba STAR
SUBARU,

Index No.:
702350/2018

Plaintiffs,

Motion Date:
June 20, 2023

-against-

Motion Seq. No.: 010

FRANCINE FILARDO,

Defendants.

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The following papers were read on this motion by plaintiff for an order: striking the answer, or compelling defendant to respond to plaintiff's first request for production of documents without asserting any objections except as to privilege and responding to interrogatories nos. 2, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15 contained in plaintiff's first Set of interrogatories, and ordering defendant to pay plaintiff's costs and attorneys' fees associated with this motion; and cross motion by defendant seeking an order: (1) striking plaintiff's Discovery and Inspection Demand on the ground it is burdensome, oppressive, improper and harassing; and (2) compelling plaintiff to respond to defendant's outstanding discovery demands.

Papers
Numbered

Notice of Motion, Affirmation, Memorandum of Law, and Exhibits.....	E228-235
Notice of Cross Motion, Affirmation, Exhibits.....	E236-256
Memorandum of Law in Opposition to Cross Motion.....	E257

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This action seeks damages upon claims sounding in unjust enrichment and conversion, based upon allegations defendant benefitted from and/or aided and abetted her husband, non-party

Douglas Filardo, in embezzling money while non-party Douglas Filardo was employed by plaintiff.

The motion by plaintiff seeks an order striking defendant's answer due to outstanding discovery, or to compel defendant to respond to plaintiff's "first request for production of documents" dated November 14, 2022, and to provide responses to plaintiff's interrogatories nos. 2, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15.

The first branch of the cross motion by defendant opposes the motion by plaintiff, and furthermore seeks to strike plaintiff's "first request for production of documents" dated November 14, 2022, on the ground plaintiff's "first request for production of documents" dated November 14, 2022, is overly broad and burdensome.

Although public policy favors the resolution of cases on the merits, a court may strike a pleading as a sanction if a party 'refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed'" (Pfeiffer v Shouela, 206 AD3d 941, 942 [2d Dept 2022], quoting CPLR 3126 [internal citations omitted]). "The drastic remedy of striking a pleading is appropriate when there is a clear showing that the failure to comply with discovery demands or orders was willful and contumacious" (Pfeiffer v Shouela, 206 AD3d 941, 942; see CPLR 3126[3]; Henry v Atlantis Rehabilitation & Residential Healthcare Facility, LLC, 194 AD3d 1021, 1022 [2d Dept 2021]; Matter of Apostolidis, 193 AD3d 1039, 1040 [2d Dept 2021]). "'A court can infer that a party is acting willfully and contumaciously through the party's repeated failure to adequately respond to discovery demands or to comply with discovery orders'" (Pfeiffer v Shouela, 206 AD3d 941, 943, quoting Cobo v Pennwalt Corp. Stokes Div., 185 AD3d 650, 652 [2d Dept 2020]).

Plaintiff has failed to demonstrate that defendant engaged in willful and contumacious conduct as required to strike defendant's pleading.

Furthermore, "CPLR 3101(a) requires, in pertinent part, full disclosure of all matter material and necessary in the prosecution or defense of an action" (Star Auto Sales of Queens, LLC v Filardo, 2023 NY Slip Op 02552 [2d Dept 2023] [internal quotation marks omitted]). "A party, however, is not entitled to unlimited, uncontrolled, unfettered disclosure" (id. [internal quotation marks omitted]). "Where discovery demands are overbroad, lack specificity, or seek irrelevant or confidential information, they are palpably improper and may be stricken" (id.). "[T]he appropriate remedy for an overbroad discovery demand is to vacate the entire demand rather than to prune it" (id.).

Plaintiff's "first request for production of documents" dated November 14, 2022, and interrogatories nos. 2, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15 "were palpably improper in that they were overbroad and burdensome, sought irrelevant or confidential information, or failed to specify with reasonable particularity what was demanded" (id.; see Orange & Rockland Util., Inc. v County of Rockland, 206 AD3d 668, 669 [2d Dept 2022]).

As such, the motion by plaintiff seeking to strike defendant's answer, or compel defendant to respond to plaintiff's "first request for production of documents" dated November 14, 2022, and plaintiff's interrogatories nos. 2, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15 is denied, and the first branch of the cross motion by defendant seeking to strike plaintiff's "first request for production of documents" dated November 14, 2022, is granted.

The second branch of the cross motion by defendant seeks an order compelling plaintiff to respond to defendant's discovery demands dated October 18, 2022, on the ground plaintiff's objections/responses to items nos. 1, 2, 3, 4, 5, 6, 7, 8, 11, 13, 18, 19, 20 and 21, were improper.

Plaintiff's objections/responses to defendant's discovery demands dated October 18, 2022, item nos. 1, 2, 3, 4, 5, 6, 7, 8, 11, 18, 19, 20, and 21 were not improper, as the defendant's demands sought information that was either irrelevant to this action, or premature, or the demand failed to specify with reasonable particularity what was demanded. With respect to item no. 13, plaintiff agreed to provide the requested documentation on the condition defendant kept the documents in confidence.

As such, the second branch of the cross motion by defendant seeking an order compelling plaintiff to respond to defendant's discovery demands dated October 18, 2022, is denied.

Accordingly, it is

ORDERED that the motion by plaintiff seeking to strike defendant's answer, or compel defendant to respond to plaintiff's "first request for production of documents" dated November 14, 2022, and plaintiff's interrogatories nos. 2, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15, is DENIED; and it is further

ORDERED that the first branch of the cross motion by defendant seeking to strike plaintiff's "first request for production of documents" dated November 14, 2022, is GRANTED; and it is further

ORDERED that the second branch of the cross motion by defendant seeking an order compelling plaintiff to respond to defendant's discovery demands dated October 18, 2022, is DENIED.

Any requests for relief not specifically addressed herein are DENIED.

This constitutes the Decision and Order of the court.

Dated: August 17, 2023



Denis J. Butler, J.S.C.

